



Orora v Ola Energy Kenya Limited (Formerly Libya Oil Kenya Limited) (Cause 2206 of 2015) [2025] KEELRC 2987 (KLR) (30 October 2025) (Judgment)

Neutral citation: [2025] KEELRC 2987 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 2206 OF 2015
L NDOLO, J
OCTOBER 30, 2025**

BETWEEN

STEVE NYAGAKA ORORA CLAIMANT

AND

OLA ENERGY KENYA LIMITED (FORMERLY LIBYA OIL KENYA LIMITED) RESPONDENT

JUDGMENT

1. Steve Nyagaka, the Claimant in this case, was a long serving employee in the oil marketing sector having been employed by Esso Kenya Limited on 11th June 1990 at an entry level of Accountant Trainee.
2. Upon takeover of Esso Kenya Limited by Libya Oil Kenya Limited, the Claimant's services were transferred. Libya Oil Kenya Limited later transitioned to Ola Energy Kenya Limited, the current Respondent which has continued in the core business of oil marketing.
3. The dispute before me arose from termination of the Claimant's employment, which was triggered by an alleged loss of oil products. The Claimant states his case in a Statement of Claim dated 10th December 2015 and the Respondent denies the claim by a Statement of Response dated 1st February 2016 and amended on 24th February 2016.
4. At the trial, the Claimant testified on his own behalf and the Respondent called Benedicta Karimi. The parties also filed written submissions.

The Claimant's Case

5. The Claimant was first employed by Esso Kenya Limited on 11th June 1990 as an Accountant Trainee. In the milieu of take over and change of business names, the Claimant rose through the ranks to the position of Special Projects Manager, earning a monthly salary of Kshs. 848,260.50 plus a house



- allowance of Kshs. 220,577.73 a car allowance of Kshs. 100,000 and security allowance of Kshs. 86,628.30.
6. The Claimant claims to have had a stellar employment period spanning twenty-five years and four months.
 7. Following stock variances at the Nairobi Terminal, highlighted in the Kenya Pipeline Company Reconciliation Report of March 2014, investigations were commenced. On 15th October 2014, an internal investigation team of eight employees drawn from several departments, including the Claimant, was commissioned to investigate and reconcile stock variances at the Nairobi Terminal.
 8. On 21st October 2014, the Respondent's Acting General Manager approved a preliminary internal irregularity report that identified employees and through-putter staff who were involved in the loss of product at the Nairobi Terminal, through use of falsified Kenya Revenue Authority (KRA) documents and stamps.
 9. The Claimant avers that the initial internal investigation report dated 27th October 2014, identified the cause of the variances as fraud by Nairobi Terminal staff, using third party through-putter accounts and falsified KRA documentation and stamps. The Claimant points out that he was not implicated in any wrongdoing or negligence in his managerial duties.
 10. The Claimant states that the investigation report identified that product was lost through fraudulent transactions facilitated by through-putters and identified employees. The Claimant accuses the Respondent of visiting the wrongs of other people on him.
 11. The Claimant pleads that in October 2014, the Respondent commissioned Deloitte Consulting Limited to conduct a forensic audit on product movement and stock discrepancies at the Nairobi Terminal. According to the Claimant, he was not questioned by the forensic auditors nor was he required to submit a written statement.
 12. In March 2015, Deloitte issued its final report, which the Claimant maintains, corroborated the findings of the internal investigation report. The Claimant adds that no culpability was attributed to him.
 13. The Claimant avers that the investigations and the Deloitte final report revealed that the Respondent's accounting system was weak and susceptible to fraudulent transactions.
 14. The Claimant faults the Respondent for failing to report fraud in the nature of criminal activities to either the police or Kenya Revenue Authority whose documents had been falsified.
 15. By letter dated 18th November 2014, the Claimant was invited to an investigatory meeting scheduled for 21st November 2014. According to the Claimant, the Respondent made it very clear that this meeting did not constitute a disciplinary process.
 16. On 30th April 2015, the Claimant received a letter inviting him to attend a disciplinary hearing on 5th May 2015. He contends that the charges levelled against him by this letter were general in nature, baseless and unsubstantiated. He adds that the findings and recommendations of the disciplinary panel were not shared with him.
 17. Further, the Claimant complains that new charges not mentioned in the show cause letter were introduced at the hearing.
 18. The Claimant was summarily dismissed by letter dated 15th October 2015. He states that the Respondent's action was motivated by ill will, malice and bias. He therefore concludes that the



dismissal was unlawful and unfair. In this regard, the Claimant cites differential treatment of other employees mentioned in the alleged product loss and inordinate delay in concluding his case, in addition to mishandling of his appeal.

19. The Claimant's case is that there was no justifiable reason for the termination of his employment and that he was not availed due process. He therefore seeks reinstatement or in the alternative:
- a. Net pay at the rate of Kshs. 878,805.57 for period between 16th October 2015 and 26th March 2029 totalling Kshs. 141,487,697;
 - b. Loss of Respondent's share of Provident Fund contributions of Kshs. 74,222.79 per month for the period between 16th October 2015 and 26th March 2029 being Kshs. 11,949,869;
 - c. Payment in lieu of leave for period between 2016 and 2029 in the sum of Kshs. 13,398,456;
 - d. Kshs. 1,408,750 being medical insurance premium for loss of medical cover for period between 16th October 2015 and 26th March 2029;
 - e. Loss of group life insurance premium for period between 16th October 2015 and 26th March 2029 in the sum of Kshs. 1,408,750;
 - f. Loss of interest of subsidy benefit for period between 16th October 2015 and 26th March 2029 being Kshs. 21,624,116;
 - g. Loss of club membership subscription benefit for 2016 to 2031 in the sum of Kshs. 1,365,000;
 - h. Loss of end of year Christmas benefit for 2016 to 2029 being Kshs. 294,000;
 - i. Kshs. 1,013,116 being one month's salary in lieu of notice;
 - j. Severance pay @ one month's salary for each completed year of service being Kshs. 25,665,613;
 - k. Seniority pay equivalent to six months' pay totalling to Kshs. 6,078,698;
 - l. A half month's salary for number of years up to retirement age in the sum of Kshs. 6,796,322;
 - m. Ex gratia payment equivalent to two months' pay amounting to Kshs. 2,026,233;
 - n. General damages;
 - o. Costs plus interest.

The Respondent's Case

20. In its Statement of Response as amended on 24th February 2016, the Respondent admits that the Claimant was its employee for a period of 25 years and 24 months but states that there was no guarantee that the Claimant would work until the retirement age of 60 years. The Respondent therefore terms the claim for anticipatory salaries as speculative.
21. The Respondent denies that the Claimant had a clean employment record, stating that the Claimant was issued with a final warning letter in 2014, on allegations of negligence in the performance of his duties and failure to follow policy and procedure.
22. The Respondent traverses all the Claimant's claims as listed in the Statement of Claim.
23. The Respondent avers that the Claimant's duties and responsibilities as set out in his job description as updated in June 2011 included the following:



- a. Financial management by providing leadership in sound financial management and developing, evaluating and implementing processes and procedures for production of management reports used in decision making to ensure accuracy, timeliness and completeness;
 - b. Corporate risk management by establishing and continuously evaluating effective and efficient risk management processes, tools and procedures;
 - c. In liaison with internal controls section and business management, to identify, develop, implement, assess and monitor appropriate internal control processes, procedures and guidelines;
 - d. To periodically review internal control processes to ensure that they meet emerging business needs;
 - e. To provide guidance to management in the interpretation and implementation of control procedures;
 - f. To develop, coach, mentor, motivate and energise an active team;
 - g. Direct supervisory roles over 3 managerial employees and 1 non-managerial employee.
24. The Respondent counters the Claimant's averment that its ACCPAC system had inherent weaknesses that prevented it from highlighting errors and that the systemic errors were known and documented by the Respondent but failed to rectify and upgrade the system.
 25. The Respondent claims to have had in place control processes, including the Oil Loss Committee and Affiliate Management of Account Analysis and Reconciliation Committee.
 26. The Respondent avers that the failure to detect loss of stock arose from mismanagement of the independent stock-takes, over which the Claimant had overall supervisory responsibility.
 27. Regarding the loss, the Respondent claims to have lost significant volumes of product averaging almost 3 million litres a year, between the years 2012 and 2014, through fraudulent shipment from the Nairobi Terminal.
 28. The Respondent states that its product was lost through fraudulent transactions and collusion between representatives of through-putters, Respondent's employees and use of falsified Kenya Revenue Authority documentation and stamps.
 29. The Respondent denies that the investigation report identified specific individuals who perpetrated fraud. The Respondent adds that the investigation report did not chronicle every failure that occasioned the fraud and does not therefore exonerate the Claimant.
 30. The Respondent asserts that the Claimant was dismissed on the ground that he carelessly and improperly performed work which from its nature was his duty, under his contract, to have performed carefully and properly and for breach of the Respondent's policies and procedures.
 31. With respect to the forensic audit report by Deloitte Consulting Limited, the Respondent claims that the listing of perpetrators and enablers of the fraud was not exhaustive.
 32. The Respondent maintains that the Claimant's dismissal was backed by a valid reason and was executed in accordance with due procedure. The Respondent accuses the Claimant of frustrating hearing of his appeal.



Findings and Determination

33. There are two (2) issues for determination in this case:
- a. Whether the Claimant's dismissal was lawful and fair;
 - b. Whether the Claimant is entitled to the remedies sought.

The Dismissal

34. The Claimant was summarily dismissed by letter dated 15th October 2015, stating as follows:

“Dear Steve,

Re: Notice Of Summary Dismissal From Employment

We write further to the Notice to show cause letter to you dated 30th April 2015. We also refer to the verbal representations that you made during the notice to show cause hearing which was held on 3rd June 2015 together with the supporting documentation that you provided.

Libya Oil Kenya Limited (“the Company”) has considered the representations and documentation that you provided in response to the allegations levelled against you and has found the same are inadequate. A final decision has been made to summarily dismiss you from your employment on the following grounds:

1. You carelessly and improperly performed work which from its nature was your duty, under your contract, to have performed carefully and properly;
2. You failed or refused to follow written policies and procedures in the conduct of your job; and
3. On account of the above failures on your part, the Company lost significant volumes of product averaging almost 3 million litres a year between the years 2012 and 2014.

The above reasons have therefore led the Company to conclude that it has lost trust and confidence in you. As a result, a decision has been made to summarily dismiss you from your employment with the Company with effect from 15th October 2015.

Should you wish to appeal against this decision, you are required to lodge an appeal stating your grounds of appeal in full within 7 working days of being informed of your summary dismissal. Thereafter, you will be invited to a further hearing to present your appeal.

In the meantime, as you consider your next action, you will be paid your terminal dues (to be computed and communicated by HR) subject to deduction of any applicable taxes and statutory deductions.

Your Certificate of Service is attached herewith.

Kindly make arrangements to contact the HR Department to finalise the modalities of your clearance, handover of all company property in your possession and exit requirements.



You remain bound by the provisions of Security of Information in your contract of employment in respect of your obligation not to at any time make public or disclose to any person any confidential information which may have come into your possession by reason of your employment with the Company.

The company wishes you all the best in your future endeavours.

Yours faithfully,

Libya Oil Kenya Limited

(signed)

Duncan Murashiki

General Manager”

35. This letter indicts the Claimant for careless and improper performance of his work, coupled with failure to follow written policies and procedures. The question for determination by the Court is first, whether these were valid reasons and second, whether they were proved at the shop floor.
36. The standard of proof in this regard, is set by Section 43 of the *Employment Act* as follows:
- 43.(1) In any claim arising out of termination of contract, the employer shall be required to prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of section 45.
- (2) The reason or reasons for termination of contract are the matters that the employer at the time of termination of the contract genuinely believed to exist, and which caused the employer to terminate the services of the employee.
37. The employer’s burden under Section 43 is discharged at the shop floor, by strict adherence to the mandatory procedural fairness requirements established by Section 41 of the Act, in the following terms:
- 41.(1) Subject to Section 42(1) an employer shall, before terminating the employment of an employee on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during the explanation.
- (2) Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under section 44 (3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1) make.
38. Section 43 of the Act mirrors the ‘range of reasonable responses test’ established by Lord Denning in *British Leyland UK Ltd v Swift* [1989] I.R.L.R as follows:
- “The correct test is; was it reasonable for the employer to dismiss him? If no reasonable employer would have dismissed him, then the dismissal was unfair, but if a reasonable employer might reasonably have dismissed him, then the dismissal was fair. It must be remembered that in these cases there is a band of reasonableness, within which one employer might reasonably take one view; another quite reasonably takes a different view. One would



quite reasonably dismiss the man. The other quite reasonably keep him on. Both views may be quite reasonable. If it was quite reasonable to dismiss him, then the dismissal must be upheld as fair even though some other employer may not have dismissed him.”

39. The ‘range of reasonable responses test’ cautions every employment court to guard itself against replacing the employer’s decision with its own. If a reasonable employer could possibly have taken the decision made by the employer in the particular case, the employer’s decision should not be disturbed.

40. In its final submissions dated 12th September 2025, the Respondent relied on the decision in *Iyego Farmers’ Cooperative Society v Kenya Union of Commercial Food and Allied Workers Union* [2015] eKLR where the Court of Appeal cited with approval, the following holding in the South African case of *Nampak Corrugated Wadeville v Khoza* (JA 14/98) [1998] ZALAC 24:

“The determination of an appropriate sanction is a matter which is largely within the discretion of the employer. However, this discretion must be exercised fairly. A court should therefore, not lightly interfere with the sanction imposed by the employer unless the employer acted unfairly in imposing the sanction. The question is not whether it could have imposed the sanction imposed by the employer, but whether in the circumstances of the case the sanction was reasonable.”

41. From the evidence on record, the Claimant’s woes were triggered by an alleged loss of oil products at the Nairobi Terminal, over a period of time. There was however no evidence adduced as to the exact volume or value of loss nor was any specific wrong assigned to the Claimant. This paucity of evidence may explain why the charges levelled against the Claimant were generic in nature, with no specific details.

42. In its decision in *Rebecca Ann Maina & 2 others v Jomo Kenyatta University of Agriculture and Technology* [2014] eKLR this Court stated the following:

“...in order for an employee to respond to allegations made against them, the charges must be clear and the employee must be afforded sufficient time to prepare their defence. The employee is also entitled to documents in the possession of the employer which would assist them in preparing their defence. The employee is further entitled to call witnesses to buttress their defence.”

43. In light of the finding that the charges levelled against the Claimant were generic in nature, his right to procedural fairness as required by Section 41 of the *Employment Act* was compromised.

44. Moreover, the Respondent did not offer any justification for its decision to depart from the recommendations of its own Disciplinary Committee.

45. Both parties cited the decision in *Mathew Kipkemboi Kitai v Postal Corporation of Kenya* [2016] eKLR where my brother Radido J rendered himself thus:

“The question therefore arises whether it is open to an employer to alter a Disciplinary Committee’s decision or recommendations without contractual or statutory authority in employment underpinned by statute and without further hearing the employee on the alteration.

In my considered view and I so endorse, the position taken by the Labour Appeal Court of South Africa in *South Africa Revenue Service v CCMA & Ors* (2014) 1BLLR 44 (see also *South Africa Revenue Service v CCMA & Ors* (2015) ZALCCT 14), that for an employer



to alter or overturn a decision of a disciplinary committee would be procedurally unfair if the employee is not given a hearing on altering the recommended sanction, as equally sound under the framework envisaged by Article 41 of *the Constitution* (but I must place and repeat a caveat that where a contract or statute allows such alteration, unfairness may not be an issue.”

46. The Respondent did not demonstrate to the Court the basis for abrogating the recommendation of the Disciplinary Committee and clearly, the Claimant was not heard on the alteration.
47. Flowing from the foregoing findings and conclusions, I return a verdict that the Claimant’s dismissal was wrongful and unfair.

Remedies

48. The Claimant sought reinstatement, with a myriad of remedies in the nature of anticipatory pay and benefits up to retirement age, as an alternative. In light of the lapse in time post separation, reinstatement would not be an appropriate remedy in this case.
49. However, apart from notice pay, the Claimant did not seek any of the other remedies provided under Section 49 of the *Employment Act*, and the Court agonised over this choice.
50. In its final submissions, the Respondent cites the decision in *Express Connections Limited v Ezekiel Kiarie Kamande* [2016] KECA 535 where the Court of Appeal held that in the event a party fails to plead and claim an essential part of their claim, that party is deemed to have waived that portion of the claim, and the Court cannot purport to grant it.
51. On the claims in the nature of anticipatory salaries and benefits, the Respondent referred the Court to the decision in *D.K Njagi Marete v Teachers Service Commission* [2020] KECA 840 (KLR) where my brother Rika J held that such a remedy would not be fair or reasonable.
52. In opposing the claim for general damages, the Respondent relied on the Court of Appeal decision in *Kenya Broadcasting Corporation v Geoffrey Wakio* [2019] eKLR where it was held that general damages are not awardable for wrongful termination.
53. Regarding the claim for severance pay, the only thing to say is that because the Claimant did not exit the Respondent’s employment on account of redundancy, he could not lay a claim reserved for that mode of separation.
54. Finally, the only award I will make in favour of the Claimant is the sum of Kshs. 1,013,116 being one month’s salary in lieu of notice.
55. This amount will attract interest at court rates from the date of judgment until payment in full.
56. Each party will bear their own costs.

DELIVERED VIRTUALLY THIS 30TH DAY OCTOBER 2025

LINNET NDOLO

JUDGE

Appearance:

Mr. Bowry, SC for the Claimant

Mr. Ohaga, SC with Mr. Kiche for the Respondent

